CONSTITUTIONAL LAW—FEDERAL LICENSE TAX—STATE AGENCIES.—SOUTH CAROLINA v. UNITED STATES, 26 Sp. Ct. 110.—*Held*, that the Federal government may levy the license taxes, prescribed by the internal revenue laws for dealers in intoxicating liquors, upon the dispensing and selling agents of a state, which, in the exercise of its sovereign power, has taken charge of the business of selling such liquors.

This decision emphasizes an important qualification of the doctrine recognized ever since the case of *McColloch v. Maryland*, 4 Wheat. 316, namely, that when a state assumes control of an industry or engages in an activity which is not an instrumentality of government, its agencies are not exempt from taxation by Congress. It had already been decided that where a state engages in selling liquors it cannot control the importation. *Vance v. Vandercock*, 170 U. S. 438; *Sholmberger v. Pa.*, 171 U. S. 1. The United States cannot tax the salaries of state officials. *The Collector v. Day*, 11 Wall. 113, nor the revenue of a municipal corporation derived from its loan of capital to a railroad. *U. S. v. B. & O. R.*, 17 Wall. 322. Nor may it tax the income of municipal bonds held by an individual. *Pollock v. F. L. & T. Co.*, 158 U. S. 601. In all the foregoing cases the tax was upon an agency of government. The distinction now made clear was suggested in the case of *National Bank v. Com.* 9 Wall. 353. It was there said: "It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional." A charge which is not in its nature a tax may be levied. This was decided in the *Head Money Cases*, 112 U. S. 580, and in *Veazie Bank v. Fenno*, 8 Wall. 533, where a tax upon circulating notes of state banks for the purpose of destroying their circulation was held valid.

CONSTITUTIONAL LAW—FORMER JEOPARDY—CONVICTION IN APPELLATE TRIBUNAL.—TRONO v. UNITED STATES, 26 Sp. Ct. 121.—*Held*, that the Supreme Court of the Philippine Islands may, upon appeal of the accused, reverse the conviction below and convict for higher offense.

"No man is to be brought into jeopardy of his life more than once for the same offense" is from Blackstone, 4 *Bl. Com.* 335. *Bank v. Brown*, 9 Wend. matter of practice, *Winsor v. Reg.*, 7 B. & S. 276. But in this country the principle is fundamental, has been adopted by the Federal Constitution, and, although that clause is not binding upon the states, it is recognized by Constitution or under the common law in all the states. *U. S. v. Keen*, 1 McLean 429; *Livingston v. New York*, 8 Wend. 85, 100. As a general rule a party to a cause may waive any right the law has given him. *Brown v. Webber*, 6 Cush. 560 This right is waived by application for a new trial. *Gannon v. People*, 127 Ill. 507; *People v. Hardson*, 61 Cal. 378. The courts are, however, in direct conflict upon the extent of this waiver. The dissenting opinion shows the great weight of authority opposed to this decision. The ruling judge, however, has shown the weighty reason favoring it and it is significant that New York, Missouri, Virginia, Georgia, Indiana, Kansas and Kentucky adopted this rule by statute or constitutional amendment after the courts had fixed the law by judicial decision. *See editorial comment.*

CONTRACTS—LOCATION OF DEPOTS—PUBLIC POLICY.—ENID RIGHT OF WAY & TOWNSITE CO. v. LILE, 82 Pac. 811.—A contract which provides that, for a consideration, the location of a railroad corporation shall be at a certain without regard to the question of the needs of the people, or the public conpoint, without regard to the question of the needs of the people, or the public convenience, is held to be against public policy. Burford, C. J. Burnell and Pancoast, JJ., *dissenting*.

A contract with a land owner, in consideration of certain land for a right of way, to erect a depot thereon, is valid. *Watterson v. Railroad Co.*, 74 Pa. St. 208. Equity will not compel specific performance of a contract to locate a depot at a certain point and at no other point in a town. *Marsh v. Farburg & W. W. R. R. Co.*, 64 Ill. 414. Company may contract to locate a station at one point but may not contract not to locate at other points. *Tex. & St. L. R. R. v. Roberts*, 60 Tex. 545. A contract not to build a depot at a certain place for one year is not *per se* against public policy. *Tucker v. Allen*, 16 Kan. 323. A contract to build a depot at a certain place would not be against public

policy. *Workman v. Campbell*, 46 Mo. 305. Nor would a contract to maintain it there perpetually. *R. R. Co. v. Dawson*, 62 Tex. 260. The authorities agree that the railroad company may not bind itself either to build or refrain from building depots in such a manner that an inducement may be furnished to a possible neglect of the convenience of their patrons. *R. R. Co. v. Matthew*, 104 Ill. 257 and note to *R. R. Co. v. Ryan*, 11 Kan. 602.

EJECTMENT—WHEN LIES—STRETCHING WIRES OVER LAND.—BUTLER V. FRONTIER TEL. CO., 92 N. Y. SUPP. 684.—Under the N. Y. Code Civ. Proc. declaring an action of ejectment to be "an action to recover immediate possession of property," *held*, that an owner may maintain ejectment against one who has taken possession of the space above the surface of the land to the extent of stretching wires across it. Nash and Hiscock, JJ., *dissenting*.

The question involved in the present case is one which has been variously decided. At common law ejectment would not lie for anything whereon entry could not be made. 2 *Crabb on Real Property*, 710. It was first held in New York that it would lie for anything attached to the soil of which the sheriff could deliver possession. *Jackson v. May*, 16 Johns. 184. But later in *Sherry v. Frecking*, 4 Duer 452, such action was held maintainable where the injury consisted of overhanging eaves, on the theory that land extends upwards as well as downwards as far as the owner of the subjacent soil may see fit to extend it; 3 *Kent's Com.* 487; this case being overruled by *Aiken v. Benedict*, 39 Barb. 400, and *Vrooman v. Jackson*, 62 Hun. 362, holding nuisance to be the proper remedy. Thus the present case reverses the former New York rule and is in accord with the weight of recent authority. *Murphy v. Bolger Bros.*, 60 Vt. 723; *McCourt v. Eckstein* 22 Wis. 153. But that nuisance is the proper remedy, see *Wood, Nuis.* Sec. 105; *Tyler, Eject.* 38.

HUSBAND AND WIFE—AFFECTIONS—ALIENATION.—GREGG V. GREGG, 75 N. E. (IND.).—*Held*, that a divorced wife is entitled to maintain an action against her former mother-in-law for alienation of the affections of her husband by acts maliciously done, which were calculated to produce such result.

There is very little conclusive authority on this proposition in the decisions of the courts of this country or in England. *Duffies v. Duffies*, 8 L. R. A. 420. At common law a wife could not maintain an action against one who wrongfully and maliciously enticed her husband from her. 2 *Bl. Com.* p. 142 This disability of the wife was due to the legal fiction that the husband and wife were one person, *i. e.*, the husband. *Walker v. Cronin*, 107 Mass. 555. Some courts go so far as to hold that not even under the modern statutes, allowing married women to sue, can a wife maintain an action against another for enticing away her husband or alienating his affections. *Tiffany, Domestic Relations*, p. 79. By the great weight of authority, however, since the loss of services is not necessary to the action and the right to each other's society and comfort is reciprocal, a wife may maintain such action. *Warren v. Warren*, 50 N. W. 842; *Mehrhoff v. Mehrhoff*, 26 Fed. 13. A case directly in point, *Williams v. Williams*, 50 Col. 51, holds that a wife may maintain an action against a mother-in-law who wrongfully enticed her husband to abandon her.

INSURANCE—BENEFICIAL ASSOCIATIONS—WARRANTIES OF ASSURED.—CALDWELL V. GRAND LODGE UNITED WORKMEN OF CALIFORNIA 82 Pac. 781. (CAL.). —*Held*, that one who joins a beneficial association and agrees to abide by and conform to all rules and regulations *warrants* statements made as to relationship of beneficiary to him.

An application for membership directing payment to "M. H., wife" is not a warranty that M.H. is applicant's wife as applicant is not yet a member and so not bound by the constitution. *A. O. U. W. v. Hutchinson*, 6 Md. 399. Where the beneficiaries are limited to wife and children a false statement that beneficiary is applicant's wife vitiates the policy. *Smith v. Baltimore & O. R. Co.*, 81 Mo. 412. Stipulation that violation of a "condition" shall render the contract void does not constitute a statement a warranty where the statement is referred to as a "representation." *Vivar v. K. of P.*, 52 N. J. Law 455. Nor is failure to disclose the existence of another living wife a fraud upon the association. *Story v. Williamsburgh, etc.*, 95 N. Y. 474. Even if applicant